

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MATHEW M. NELSON

Application 10/589,386
Technology Center 3700

DECISION ON PETITION

This is a decision on Patent Owner's "Petition to Director," filed February 12, 2010 ("Petition"). The Petition seeks revival of the application and reinstatement of the appeal.

See 75 Fed. Reg. 15,689-90 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

1. On June 10, 2009, Appellant filed an Appeal Brief.
2. On July 16, 2009, the Examiner entered a Notification of Non-Compliant Appeal Brief.
3. On July 23, 2009, Appellant filed Corrections to Appeal Brief.
4. On October 19, 2009, the Examiner entered another Notification of Non-Compliant Appeal Brief.
5. On October 26, 2009, Appellant filed Applicant's Amended Appeal Brief.

6. On January 19, 2010, the Examiner entered a Notice of Abandonment, noting:

The communication filed on 10/19/09 (sic 10/26/09) did not correct the status of claims.

7. On February 12, 2010, Appellant filed the present Petition and a second Applicant's Amended Appeal Brief. The Petition seeks revival of the application and reinstatement of the appeal under 37 C.F.R. § 1.183.

Petition, p. 1.

8. Rule 1.183 specifies:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed.

9. In the Petition, Appellant's attorney admits that in Applicant's Amended Appeal Brief of October 26, 2009, the identity of the claims on appeal, as required by 37 C.F.R. § 41.37(c)(1)(iii), inadvertently was omitted. Petition, p. 2.

10. Appellant's attorney argues that such omission was an inadvertent clerical error and should not be the basis for holding the application abandoned, i.e.:

It is beyond all reasonable doubt plainly and manifestly unjustified to use a technicality as a nuclear option to decide that the appeal is dismissed, not on its merits, but on a clerical error made by Applicant's undersigned attorney.

Petition, p. 3.

DISCUSSION

Inadvertent clerical errors do not constitute sufficient cause to invoke the provisions of Rule 1.183.

That is not to say, however, that no remedy is available for correcting the present situation. Rule 1.137(b) relating to revival of unintentionally abandoned applications does provide a process for achieving such a remedy. This process is recommended for use by Appellant in the present situation.

DECISION

In view of the foregoing, the Petition is DENIED and Appellant is granted a period of one month from the date hereof to file a petition under Rule 1.137(b).



James T. Moore
Acting Chief Administrative Patent Judge

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